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RESOLVING DISPUTES OVER FINANCIAL MANAGEMENT OF ATHLETES: ENGLISH AND AMERICAN EXPERIENCES

JAMES A.R. NAFZIGER*

This symposium on legal aspects of the Olympic Games highlights the growing importance of international sports law. *Union Royale Belge des Sociétés de Football Association ASBL & Ors v. Bosman*,¹ recently decided by the European Court of Justice, is another reminder of the critical relationship between international legal institutions and the sports arena. *Bosman* also highlights issues related to the freedom of athletes and their management by sports associations.² Although international sports law has been developing rapidly in Europe as a professional and academic topic, we in the United States have been rather slow off the starting blocks in recognizing the emerging body of law. This symposium is therefore an idea whose time has certainly come.

The role of sports associations in the financial management of athletes raises significant legal issues. These issues relate to sponsorship of athletes, labor contracts, eligibility for competition, the role of broadcasting contracts and management of revenue earned by non-professionals. In particular, the growing dominance of broadcasting interests and commercial sponsorship in the sports arena has generated controversy.

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1. (Case C-415/93) [1995] 1 CEC 38. In *Bosman*, the European Court of Justice struck down rules of the Union of European Football Association for international transfers of football players and nationality restrictions that had imposed a three-player limit on teams engaged in inter-club matches within the member states of the European Union. The decision, based on interpretations of the Treaty of Rome, extends to players and competition in both the European Union and the European Economic Area. *Bosman* builds upon decisions of the European Court of Justice that struck down a limited range of nationality restrictions as violations of the Treaty of Rome. *Id.* at 69-71. The two principal cases are *Walrave v. Union Cycliste Internationale*, Case 36/74, 1974 E.C.R. 1405, and *Donà v. Mantero*, Case 13/76, 1976 E.C.R. 1333. For discussion of these issues, see GEORGE A. BERMAN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 513 (1993); Jacques Rogge, *The Olympic Movement and the European Union*, OLYMPIC REV., Oct.-Nov. 1995, at 44.

2. See generally *Bosman*, (Case C-415/93) [1995] 1 CEC at 53-118.

In recent years the International Olympic Committee (IOC) has devoted more and more attention to raising funds to support its ambitious agenda of activities. Consequently, the IOC has become a leader in a trend toward commercializing sports. The IOC's commercial activities include broadcasting contracts,³ The Olympic Programme (TOP) sponsorships⁴ and the work of the New Sources of Finance Commission, which seeks "to increase Olympic marketing revenues and balance the resources of the Olympic Movement so that it is not entirely dependent on television rights."⁵

The Olympic Movement plays a central role in the international sports arena.⁶ It is thus not surprising that the IOC and its National Olympic Committees (NOCs) are routinely involved in commercial disputes. The issues often in dispute include trademark rights, television proprietorship issues, news access, event and program sponsorship, ambush or parasitic marketing, anti-trust and competition law and eligibility issues.⁷

3. The price of exclusive rights to televise the Olympic Games within a single country or region has risen dramatically. Recently, for example, the National Broadcasting Company (NBC) successfully bid a record \$1.27 billion for exclusive rights in the United States to broadcast the 2000 Summer Olympics in Sydney, Australia and the 2002 Winter Games in Salt Lake City, Utah. Richard Sandomir, *For \$1.27 Billion, NBC Accomplishes An Olympic Sweep*, N.Y. TIMES, Aug. 8, 1995, at A1. According to IOC rules, this fee will be divided by the IOC, the national Olympic committees and the local organizing committees. *Id.* See *Broadcast Olympics: Lillehammer Success*, OLYMPIC REV., Dec. 1994, at 587; *Sports Eurovision*, OLYMPIC REV., Sept. 1994, at 354. For discussion of Eurosport, see Stephen Townley, *Some Current International Issues on Rights to Sporting Events and Trademarks*, SPORTS LAW., July-Aug. 1994, at 6.

4. See generally, *Working Toward Greater Independence*, OLYMPIC REV., Jan.-Feb. 1994, at 36.

5. Denis Echard, *104th Session: Work Accomplished*, OLYMPIC REV., Aug.-Sept. 1995, at 7, 9.

6. See Edward E. Hollis, III, *The United States Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures Under the Amateur Sports Act of 1978*, 71 IND. L.J. 183 (1995). "The Olympic Movement includes the IOC, International Federations (IFs), National Olympic Committees (NOCs), the organizing committee for a particular four-year olympiad, and the Olympic Congress." *Id.* at 184 (quoting JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 25-26 (1988)). See also David J. Ettinger, Comment, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT'L L. 97, 99 (1992) (explaining leadership role of IOC in Olympic Movement); Marcia B. Nelson, *Struck Between Interlocking Rings: Efforts to Resolve the Conflicting Demands Placed on Olympic National Governing Bodies*, 26 VAND. J. TRANS-NAT'L L. 895, 899-900 (1993) (describing interaction of Olympic Movement, IOC, and NOCs); Jill J. Newman, *The Race Does Not Always Go to the Stronger or Faster Man . . . But to the One Who Goes to Court! An Examination of Reynolds v. International Amateur Athletic Fed'n et al.*, 1 SPORTS L.J. 205, 207 (1994) (outlining roles of numerous organizations governing amateur athletic competition).

7. See Townley, *supra* note 3. For a discussion of ambush or parasitic marketing, see Robert N. Davis, *Ambushing the Olympic Games*, 3 VILL. SPORTS & ENT. L.J. 423 (1996); Stephen M. McKelvey, *Atlanta '96: Olympic Countdown to Ambush Armageddon?*, 4 SETON HALL J. SPORTS L. 397 (1994).

Within the Olympic Movement, individual athletes confront international federations (IFs) and national sports organizations with similar issues. As these groups have grown and become more professionalized,⁸ their programs and daily management have become more commercialized and complicated. For example, the United States Figure Skating Association has struggled to reconcile its need for broadcasting revenue with the interests of individual athletes. Recently several figure skaters challenged a decision by the executives of their national federation to enter into a broadcasting contract that required a rescheduling of events to the detriment of the skaters.⁹

In resolving such disputes between athletes and sports associations, arbitration plays a particularly important role.¹⁰ Under the umbrella of the International Council of Arbitration for Sport (ICAS), nearly all IFs now require mandatory arbitration clauses in licensing contracts between athletes and national sports organizations.¹¹ Athletes must enter into these contracts in order to be eligible to participate in international competition sanctioned by the IFs. Therefore, the arbitration clauses in the contracts provide the basis for enforcing arbitration awards against individual athletes, even when their future livelihood may be at issue. Mandatory arbitration of disputes will be a feature of the Games beginning in 1996.¹²

8. See Philip Hersch, *U.S. Figure Skating Head Made Waves*, CHI. TRIB., May 18, 1995, at 3. For a discussion of characteristics and trends in the organizational structure of international athletics, see David B. Mack, Note, Reynolds v. International Amateur Athletic Federation: *The Need for an Independent Tribunal in International Athletic Disputes*, 10 CONN. J. INT'L L., 653 (1995); Michael R. Will, *Les structures du sport international*, in ETUDES ET RECHERCHES DU GROUPE INTERFACULTAIRE DES SCIENCES DU SPORT, UNIVERSITÉ DE GENÈVE, CHAPITRES CHOISIS DU DROIT DU SPORT 21 (1993).

9. Telephone Interview with Jonathan Fishbein, sports law consultant (Mar. 30, 1995). For a discussion of other problems related to the relationship between the United States Figure Skating Association, the International Skating Union and the Amateur Sports Act of 1978, see Jonathan S. Fishbein, *When Sovereigns Collide: Why America's Figure Skating Competitors are the Ultimate Losers Under the Amateur Sports Act of 1978*, 9 CARDOZO ARTS & ENT. L.J. 231 (1990).

10. See Lisa B. Bingham, *Arbitration of Disputes for the Olympic Games: A Procedure That Works*, ARB. J., Dec. 1992, at 33.

11. Karen Rosen and Andy Miller, *IOC Drafting Wording Requiring Athletes to Stay Out of U.S. Courts*, ATLANTA J. & CONST., Sept. 26, 1995, at 5E.

12. *Id.* See *And the Winner Is . . . Arbitrators to Resolve Disputes as they Arise at Olympics*, A.B.A. J., Apr. 1996, at 20 (noting that 1996 summer games in Atlanta, Georgia, will have arbitrators on scene for quick and final determinations). See also Hollis, *supra* note 6, at 199 (reviewing establishment of International Council of Arbitration for Sport).

Within this regime of control, the Court of Arbitration for Sport (CAS) is gradually becoming the preferred forum for resolving disputes between athletes, sports bodies and federations.¹³ Accordingly, athletes must agree to bring their disputes before the CAS or face expulsion from competitions sanctioned by the IF in their respective sports.

The development of the CAS and more informal methods for resolving disputes in the sports arena has, however, coincided with a somewhat greater, though still modest, use of the courts to resolve disputes. Athletes have brought claims in both national courts and regional courts, as in the *Bosman* case.¹⁴ The widespread adoption of terminal arbitration clauses in licensing contracts, as well as improved methods of more informal resolution of disputes, have not inhibited litigation altogether. Litigation has not declined partly because of the substantial increase in the number of professional or semi-professional athletes and partly because many financially-related claims are beyond the competence of administrative procedures and informal tribunals. These claims typically involve fundamental human rights. Thus, courts have been willing to consider a professional athlete's "right to work," the right to be heard in formal proceedings and the right to be free of bias in those proceedings.

The precise scope of this judicial review is uncertain. Domestic courts and other authorities normally enforce CAS awards and therefore refuse to conduct hearings *de novo* in matters that have already been arbitrated. But there are exceptions, for example, when an award contravenes a fundamental public interest or when issues are raised about the jurisdiction of the CAS, its competence to decide a given matter or fundamental irregularities in arbitral procedures. In *Gasser v. Stinson*,¹⁵ for example, the English High Court hinted at a restraint-of-trade exception to the normal requirement that domestic courts must recognize and enforce otherwise valid arbitral awards.¹⁶ Although the High Court denied relief to an athlete who had been suspended from competition after test-

13. Mack, *supra* note 8, at 687. The IOC established the CAS in 1983 for "the purpose of facilitating the settlement of disputes of a private nature arising out of the practice or development of sport, and, in a general way, all activities pertaining to sport." *Id.* (quoting STATUTE OF THE COURT OF ARBITRATION FOR SPORT, art. 1 (as amended 1990)).

14. Union Royale Belge des Societes de Football Ass'n ASBL & Ors v. Bosman, (Case C-415/93) [1995] 1 CEC 38.

15. Queen's Bench (June 15, 1988) (LEXIS, Intlaw Library, UK-CASE file).

16. *Id.* See also Nagle v. Feilden, [1966] 1 All E.R. 689, 693 (association should not be able arbitrarily to deny license excluding person from trade or profession).

ing positive for banned substances, the opinion suggests that if an arbitral award deprives an athlete of his or her livelihood, the reasonableness of the award *may be* reviewable by a court.¹⁷

English courts, whose decisions I will highlight, have been particularly helpful in defining parameters of judicial review.¹⁸ Normally, judicial review is very limited. Judges have often refused to review the decisions of private or "domestic" tribunals, such as review panels within sports organizations.¹⁹ In the words of one court, the rules of approved sports organizations are said to be "more than a contract. They are a legislative code laid down by the council of the union to be obeyed by the members."²⁰ English courts do, however, accept jurisdiction whenever a plaintiff has been denied an appropriate hearing or has been confronted with bias; whenever a sports organization has exercised a monopolistic position over its members; and whenever a sports organization's administrative tribunal exercises public law functions, its decision would violate statutory law or would have other public law consequences.²¹

The *Bosman* decision of the European Court of Justice, binding in the United Kingdom and other European countries, is a recent example of the latter principle at the level of regional law. In addition to the *Gasser* case, two English court opinions have been particularly significant because they disclose a modest trend away from the application of national law to govern the decisions of sports bodies.²² It must be acknowledged, of course, that two opinions

17. *Gasser*, Queen's Bench (June 15, 1988) (LEXIS, Intlaw Library, UK-CASE file).

18. For further discussion of the English jurisprudence, see James Nafziger, *International Sports Law as a Process for Resolving Disputes*, 45 INT'L & COMP. L.Q. 130, 145 (1996).

19. *Id.*

20. *Breen v. AEU*, [1971] 1 All E.R. 1148, 1154. See also *McInnes v. Onslow Fane*, [1978] 3 All E.R. 211, 223 (courts are reluctant to review decisions of private sports bodies "even where those bodies are concerned with the means of livelihood of those who take part in those activities"); *Law v. National Greyhound Racing Club Ltd.*, [1983] 1 W.L.R. 1302, 1307 (courts refuse to review decisions of domestic tribunals). Thus, judicial review in the United Kingdom seems to extend at least to cases involving clearly monopolistic practices in restraint of trade or to those involving discrimination contrary to the fundamental human rights of athletes.

21. See Nafziger, *supra* note 18.

22. For a discussion of the case law, see EDWARD GRAYSON, *SPORT AND THE LAW* (1988). This book identifies the general reluctance of courts to undertake judicial review while fully acknowledging their role in promoting the public interest and ensuring fairness and natural justice to individual athletes when their rights are seriously threatened.

alone cannot establish anything more than a modest and perhaps reversible trend.

In the first of these cases, *Greig v. Insole*,²³ the Chancery Division of the High Court of Justice assumed jurisdiction to hear a dispute brought by several professional cricketers against two sports associations, the International Cricket Conference (ICC) and its English member, the Test and County Cricket Board (TCCB).²⁴ The court held that the two associations had tortiously injured the players by unlawfully attempting to induce a breach of their lucrative contracts with a sports promotional organization, the World Series of Cricket.²⁵ The court also held that both associations had engaged in unreasonable, *ultra vires* restraints of trade by retroactively barring the players' eligibility for international competition.²⁶ It is important to note that the court's rationale for applying national law was very narrow. It limited judicial review of the decisions of the two sports associations only because neither of them was the ordinary kind of employers' association entitled to statutory immunity under English law.²⁷ Rather, the ICC was composed of member countries, not individuals who might be deemed to be employees, and the TCCB had no power to regulate relations with member athletes.²⁸ Hence, their decisions were reviewable under English law only under these particular circumstances.²⁹

In the second case, *Cowley v. Heatley*,³⁰ the court interpreted a national domicile requirement imposed on all athletes under the Commonwealth Games Constitution.³¹ In doing so, however, the court questioned its jurisdiction to review a decision by the Commonwealth Games Federation (CGF) that had denied eligibility to a swimmer.³² The South African plaintiff, Annette Cowley, had recently begun to reside in England and was nominated to represent England in the Games.³³ The Federation denied her eligibility as a member of the English team on the basis that her "domicile" was

23. [1978] 3 All E.R. 449.

24. *Id.* at 511.

25. *Id.*

26. *Id.* at 510.

27. *Id.* at 508-09.

28. *Greig*, [1978] 3 All E.R. at 508-09.

29. *Id.* at 511.

30. Chancery Div., *The Times* (July 24, 1986) (LEXIS, Intlaw library, UK-CASE file).

31. *Id.*

32. *Id.*

33. *Id.*

not in England.³⁴ The plaintiff argued that she was domiciled there under a legal definition which required her only to be currently residing in England and to have the intent of remaining there.³⁵ The court concluded, however, that an ordinary meaning of the term "domicile" applied, rather than the definition provided by the English common law.³⁶ Accordingly, she had not resided long enough in England to be domiciled there for the purpose of establishing her eligibility to compete on the English team in the Games.³⁷

Of particular interest in *Cowley* was the court's observation that the constitution of the Commonwealth Games covered a large number of different nations in the Commonwealth with members upholding many different systems of law.³⁸ In those circumstances it was the court's view that the articles of the constitution could not be governed by the law of one constituent member country.³⁹ The opinion concluded with a famous observation that the "[sport will] be better served if we do not have long-running litigation at regular intervals instituted by people seeking to challenge the decision of the regulating body."⁴⁰

Taken together, these opinions highlight the parameters of judicial review in the English courts. *Greig v. Insole* affirms only a very limited judicial role in ensuring fair and proper organization and administration of competition, particularly if it involves the livelihood and contractual integrity of professional athletes. *Cowley v. Heatley* continued a modest trend away from applying national law to interpret the rules of private sports associations. The court also extended another trend when it questioned its jurisdiction to hear a complaint brought by an athlete against an international sports organization, the Commonwealth Games Federation.

Thus, English courts caution judicial restraint in examining sports-related issues.⁴¹ As a result, English sports organizations en-

34. *Id.*

35. *Cowley*, Chancery Div., *The Times* (July 24, 1986) (LEXIS, Intlaw library, UK-Case File).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Cowley*, Chancery Div., *The Times* (July 24, 1986) (LEXIS, Intlaw library, UK-Case File).

41. British courts . . . have normally limited judicial review to disputes requiring them to interpret or enforce professional contracts or otherwise protect a person's ability to earn a living. "Amateur" athletes, therefore, have generally lacked standing to challenge decisions by their sports organizations. The courts have often refused to issue orders of certiorari

joy substantial autonomy so long as they do not offend fundamental public interests nor unjustifiably endanger the livelihood of athletes.⁴² After all, competition in the courtroom is a poor substitute for competition in the sports arena.⁴³

Courts in the United States also have been reluctant to find either express or implied rights of action in challenges by individual athletes against sports associations and have generally deferred to private processes for resolving disputes.⁴⁴ Courts are particularly

to review the decisions of private or "domestic" tribunals, such as nongovernmental review panels and other organizational mechanisms for dispute resolution. Their rules are said to be "more than a contract: they are a legislative code laid down to be obeyed by the members."

Significantly, this jurisdictional barrier has been overcome in several cases: where a plaintiff was denied a right to respond to objections or was confronted with bias; where a sports organization's administrative tribunal was deemed to be exercising public law functions or its decision would have had public law consequences; and where the relationship at issue between the parties was an amateur contract not governed by organizational rules. A final exception involves parties in a monopolistic position, such as international and national federations. These exceptions demonstrate a modest trend toward the judicial assumption of competence to review "public" issues or issues of procedural fairness.

James A.R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 509 (1992) (citations omitted).

42. [T]he principal feature of English sport law appears to be the freedom enjoyed by sporting organizations to regulate the sport concerned, provided that no right falling within an established legal category is violated. The interest of an individual in participation in sport does not so fall. To the extent that such regulation is thus protected against effective challenge in the ordinary courts, the state could be said to have been captured by such bodies. Such capture might be thought simply to reflect judicial recognition of the fact that the essence of sporting activity would be threatened by the transfer of sporting competition from the stadium to the courtroom. . . . There is no apparent reason why public interest considerations should not equally well be invoked to justify the overruling of restrictions imposed on individual participation by a sporting organization.

Andrew C. Evans, *English Law of Sport, in AUF DEM WEGE ZU EINEM EUROPÄISCHEN SPORTRECHT?* 91, 95 (Michael R. Will ed., 1989).

43. *McInnes v. Onslow Fane*, [1978] 3 All E.R. 211. The court observed that: courts must be slow to allow any implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens.

Id. at 223.

44. For example, "[t]he courts have been asked on several occasions to rule on Olympic eligibility questions. Generally, the courts have left these matters to the Olympic federations and their own procedures to resolve." RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 93 (2d ed. 1994) (citing *Gault v. United States Bobsled and Skeleton Fed'n*, 578 N.Y.S.2d 683 (App. Div. 1992)).

loath to intervene in disciplinary hearings by private associations.⁴⁵

Interpretations of the broadly worded provisions of the United States Constitution are often controlling. Courts ordinarily refuse to overrule the decisions of sports associations because these decisions do not involve the requisite "state action" that would subject them to constitutional scrutiny. Neither the Amateur Sports Act of 1978 nor any other federal law gives athletes a right to compete or a cause of action in the courts.⁴⁶ Courts have, however, become more willing to consider issues of procedural fairness.

On the other hand, the United States Constitution explicitly provides for legislative protection of intellectual property rights.⁴⁷ Consequently, courts normally review claims involving trademarks and other intellectual property rights, especially when these are held by Olympic or Pan-American organizations to which the Amateur Sports Act defers. For example, the United States Olympic Committee's success in preserving its trademark rights is apparent in a line of judicial decisions.⁴⁸ In *San Francisco Arts & Athletics, Inc. v. USOC*,⁴⁹ the United States Supreme Court enjoined an organiza-

45. The courts should rightly hesitate before intervening in disciplinary hearings held by private associations . . . Intervention is appropriate only in the most extraordinary circumstances, where the association has clearly breached its own rules, that breach will imminently result in *serious* and irreparable harm to the plaintiff, and the plaintiff has exhausted all internal remedies. Even then, injunctive relief is limited to correcting the breach of the rules. The court should not intervene in the merits of the underlying dispute.

Harding v. United States Figure Skating Ass'n, 851 F. Supp. 1476, 1479 (D. Or. 1994) (dictum). See also Hollis, *supra* note 6, at 196-97 (discussing role of American courts in implementing international sports law).

46. See Behagen v. Amateur Basketball Ass'n, 884 F.2d 524 (10th Cir. 1989); Oldfield v. The Athletic Congress, 779 F.2d 505 (9th Cir. 1985); Michels v. United States Olympic Comm., 741 F.2d 155 (7th Cir. 1984); DeFrantz v. USOC, 492 F. Supp. 1181 (D.D.C. 1980); Dolan v. United States Equestrian Team, 608 A.2d 434 (N.J. Super. Ct. App. Div. 1992).

47. Article I, § 8 of the Constitution provides that "[t]he Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing, for limited times to authors and inventors the exclusive right to their respective writings and discoveries." U.S. CONST. art. I, § 8. Congress has implemented this provision in various laws to protect trademarks, patents and copyrights.

48. See *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522 (1987); *United States Olympic Comm. v. Intelicene*, 737 F.2d 263 (2d Cir. 1984); *International Sports Mktg., Inc. v. International Olympic Comm. & United States Olympic Comm.*, No. 83-44 (D. Vt. 1983); *United States Olympic Comm. v. Union Sport Apparel*, 220 U.S.P.Q. 526 (E.D. Va. 1983); *United States Olympic Comm. v. International Fed. of Bodybuilders*, 219 U.S.P.Q. 353 (D.D.C. 1982); *United States Olympic Comm. v. David Shoe Co., Inc.*, No. C-1-82-596 (S.D. Ohio 1982); *Stop the Olympic Prison v. United States Olympic Comm.*, 489 F. Supp. 1112 (S.D.N.Y. 1980).

49. 483 U.S. 522 (1987).

tion from applying the name "Olympic" in sports competition without the USOC's consent.⁵⁰ In another of the cases, *USOC v. Intelicense*,⁵¹ the United States Court of Appeals for the Second Circuit enjoined a Swiss corporation from marketing the five-ring Olympic emblem in the United States without the USOC's consent, after the IOC had required the corporation to obtain that consent.⁵² The court interpreted the Amateur Sports Act⁵³ to provide the USOC with remedies under the Trademark Act.⁵⁴

A fundamental policy consideration in support of the court's injunction in the *Intelicense* case was the importance of marketing revenue to the USOC.⁵⁵ Unlike the practice in many other countries, the USOC no longer receives direct governmental contributions.⁵⁶ Instead, it must rely on commercial sources of revenue such as royalties from intellectual property rights in order to help finance the participation of United States athletes in the Olympic Movement.⁵⁷

In sum, with the exception of enforcing public law, such as protections of intellectual property rights, English and American courts are similarly reluctant to interfere with the decisions of sports associations. In the United States this is true despite legislation that authorizes an official designation of sports bodies within the Olympic Movement. Ultimately, what may distinguish some of the specific details of the American experience from the English experience is the strong role of the United States Constitution in judicial analysis.

50. *Id.* at 530. The Court concluded that the language and legislative history of the Amateur Sports Act indicated that Congress clearly intended to grant the USOC exclusive use of the word "Olympic." *Id.*

51. 737 F.2d 263 (2d Cir. 1984).

52. *Id.* at 264.

53. 36 U.S.C. §§ 371-396 (1988).

54. *United States Olympic Comm. v. Intelicense*, 737 F.2d 263, 267 (2d Cir. 1984) (citing 15 U.S.C. §§ 1116-1118 (1983)). See generally Stephen B. Hay, Comment, *Guarding the Olympic Gold: Protecting the Marketability of Olympic Trademarks through Section 110 of the Amateur Sports Act of 1978*, 16 Sw. U. L. Rev. 461 (1986) (noting USOC use of 36 U.S.C. § 380 to protect trademarks).

55. *Intelicense*, 737 F.2d at 266. The USOC needed exclusive rights to market the Olympic symbol in order to maintain high levels of corporate sponsorship. *Id.* at 266 n.3.

56. *Id.* at 266.

57. *Id.* Further, the court noted that the United States, in view of the Amateur Sports Act of 1978, had "cast the lone dissenting vote against a treaty that was to give the IOC worldwide control over the use of the Olympic symbol." *Id.* at 268.